

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 342 OF 2021
WITH
INTERIM APPLICATION NO. 3119 OF 2021

1. Bharat Petroleum Corporation Ltd.,
A Body Corporate having their
office at Bharat Bhawan, 4 and 5,
Currimbhoy Road, Ballard Estate,
P. B. No. 688, Mumbai 400 001.
 2. Territory Manager,
Bharat Petroleum Corporation Ltd.,
D99, T. T. Industrial Area,
Vashi, Navi Mumbai
- ...Appellants

Vs.

Shri Bharat Krishnalal Thakkar,
Aged Major, Occ. Business,
R/o Krishnalal Chhotalal and Co.,
Near R. G. Suchak Petrol Pump,
Opp. Gnyaneshwar Mandir,
Agra Road, Kalyan (West),
District Thane

...Respondent

Shri Atul Damle, Senior Advocate, i/by Shri S. R. Page - Advocate for the
Appellants.

Mr. Dushyant Purekar a/w Mr. Rajat Dedhia – Advocate for the
Respondent

CORAM : S. M. MODAK, J.

DATE : 06th SEPTEMBER, 2022

JUDGMENT :

1. Heard learned Senior Advocate Shri Atul Damle assisted by learned

Advocate Shri S. R. Page for the Appellants/Defendants and learned Advocate Shri Dushyant Purekar assisted by learned Advocate Shri Rajat Dedhia for the Respondent/plaintiff.

2. The plaintiff's suit for eviction was decreed by the trial Court. In an appeal filed by the Appellants hereinafter described as Bharat Petroleum Corporation Ltd. (BPCL) the judgment of the trial Court was confirmed. That is how the present Second Appeal is filed.

3. Learned Senior Advocate Shri Damle extensively argued the matter. According to him the Plaintiff was not sure whether the suit will be governed as per the provisions of Transfer of Property Act or as per provisions of Maharashtra Rent Control Act. According to him, if the grounds pleaded in the plaint thereby seeking eviction are perused, the eviction is sought mainly on the following three grounds:-

- (i) Non renewal of the lease deed.
- (ii) Bonafide requirement of the landlord.
- (iii) Unauthorized construction carried out by the BPCL.

4. It is true that all these three grounds were taken. It is also true that the trial Court has answered the issue of the bonafide requirement and unauthorized construction against the landlord. But the eviction was ordered on the ground that the tenure of the lease deed has expired on 01/07/2002 and thereafter, it was not extended.

5. The Appellate Court has framed five points. The appellate court has not framed points about bonafide requirement and unauthorized construction. Probably, it may be for the reason that the landlord has not challenged those findings. On perusal of the Appellate Court judgment also there is no discussion about correctness of the findings of the trial court on the those two issues.

6. The issue about lapsing of the duration of the lease deed on 01/07/2022 was answered in favour of the Plaintiff and findings of the trial Court are confirmed. So the scope of enquiry in this appeal is limited to that issue only.

7. Learned Senior Advocate Shri Damle invited my attention to the Burmah Shell (Acquisition of its Undertakings in India) Act 1976 and more specifically the provisions of Sections 3, 5, 7 and 11. Prior to going into those provisions, it will be material to see the the chronology of the events as mentioned in the synopsis. We may find the following important dates and they are also not disputed by the landlord who became the owner of the property on 21/3/2002. They are as follows:-

Date	Particulars
17/07/1947	Lease deed between Haji Juseb Saina and Burma Shell Oil Storage and Distributing Co. of India. The duration was for 15 years. The indenture of the lease is also filed in the compilation.
17/03/1962	There was renewal of lease for a further period of 20 years.

01/07/1982	The lease was renewed for a further period of 20 years.
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8. The period of last renewal for 20 years expired on 01/07/2002. There were two events. One is purchase of the property by the plaintiff from Mr. V. P. Jog and B. P. Jog. The second is expiry of the period of lease that is for 20 years on 01.07.2002.

9. The plaintiff issued a letter to the Defendant thereby informing that he has become a landlord. There are certain correspondence. It is referred by the trial Court in a judgment (Para No. 16). They are as follows:-

Exhibits	Date	Particulars
Exh. 30	10/05/2022	Letter written by Plaintiff to Defendant.
Exh. 31	30/07/2022	A letter written by the defendant to the plaintiff thereby admitting ownership
Exh. 32	14/05/2002	Letter written by BPCL to the plaintiff thereby demanding the ownership documents
Exh. 33	03/06/2002	Documents sent by the plaintiff to the BPCL
Exh. 53	30/07/2002	Notice sent by the plaintiff to the BPCL informing about the termination of lease by efflux of time.
Exh. 54 and 55	–	Acknowledgments.

10. The BPCL was informed to handover possession within 15 days from the receipt of the notice and as they have failed the suit for eviction was filed. They have contested the suit by filing written statement. Both the parties have adduced evidence. As said above the eviction was ordered

for the reason that the duration of the lease was not renewed.

Proposed Substantial Question of Law

11. The learned Advocate for the Appellants has requested this Court to frame two substantial questions of law. They are as follows :-

- a. *Whether the Civil Court would have jurisdiction to try and entertain and decide the suit preferred by the Respondent original plaintiff for eviction particularly when the case put forth in the Plaint is that the Lease Agreement between the Respondent and the Appellant has not been renewed and that the tenancy has expired by efflux of time?*
- b. *Whether the Suit as filed before the Civil Court is maintainable considering the fact that the Plaintiff has not pleaded that the same is filed under Section 106 of Transfer of Property Act?*

12. Question No. 1 deals with “maintainability of the suit by Civil Court particularly when the duration of the lease was not renewed and the lease has expired by efflux of time”. Whereas question No. 2 deals with “not pleading in the plaint by the plaintiff that suit is filed by taking recourse to the provisions of Section 106 of the Transfer of Property Act.” Whereas according to the learned Advocate Shri Purekar for the Respondent after considering the findings and the provisions of law, these two substantial questions of law in fact do not arise and the appeal needs to be dismissed

at an admission stage itself.

13. The law on the point of entertainment of the Second Appeal is very clear. Second Appeal can be admitted if the findings by the Courts below is perverse that is to say if finding is given by not considering a piece of evidence or by wrongly appreciating the piece of evidence. It can be said to be perverse also when the findings are arrived at by wrongly interpreting the provisions of law.

14. In this case after reading those two proposed substantial questions of law, it seems that they particularly deal with interpretation of the provisions of law.

QUESTION NO. 1

Maintainability before Civil Court

15. Learned Senior Advocate Shri Damle submitted that when the duration of the lease is not extended as such the provisions of Transfer of Property Act will not be applicable and Civil Court will not be having jurisdiction. Forcefully he has not argued that Rent Court will be having jurisdiction to deal with the suit. Probably for the reason that the provisions of 1999 Act are not applicable to the defendant.

16. For appreciating this submission, it will be material to consider few facts. The indenture of lease dated 17/07/1947 is produced alongwith the annexures. It was executed between Burmah Shell Oil Storage and Distributing Company as lessee (predecessor in title of the present

appellant) and one Haji Jusub Saina as a lessor. The lease was created as the Burmah Shell Company was desirous of erecting pump outfit for its business. The recital says that the duration of the lease was from 01/07/1947 upto 30/06/1962. At that time the Burmah Shell (Acquisition of its Undertakings in India) Act 1976 was not in existence. In the year 1962 there was renewal for a period of 20 years. It was a first renewal. At that time, present plaintiff was not the owner/landlord of the premises.

17. It is submitted on behalf of the Respondent that in the indenture of lease there is no renewal clause. Be that it may, the duration of the lease was renewed in the year 1962 for the further period of 20 years. It expires in the year 1982. No written document of renewal was brought to my notice.

18. It is pertinent to note that prior to expiry of lease period in the year 1982, the Burmah Shell (Acquisition of its Undertakings in India) Act 1976 was enacted. Relevant provisions are reproduced below :--

Section 3

“On the appointed day, the right, title and interest of Burmah Shell, in relation to its undertakings in India, shall stand transferred to, and shall vest in, the Central Government.”

Section 5(1)

“Where any property is held in India by Burmah Shell under any

lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and there upon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.”

Section 7(1)

“Notwithstanding anything contained in sections 3, 4 and 5, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct by notification that the right, title and interest and the liabilities of Burmah Shell in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.”

19. As per the said Act two vesting of the right title and interest are provided.

One is vesting from Burmah Shell Company in favour of the Central Government as per the provisions of Section 3 and

second is as per the Section 7(1) that is vesting from Government in favour of any Government company.

20. It seems that after this Act there was vesting of the leasehold right in favour of BPCL, Section 5(1) and Section 7(1) mentions that the Central Government/Government Company acquires the same right title and interest which were possessed earlier by Burmah Shell Company. In this case the BPCL acquires leasehold right of the suit premises. There is no dispute that the premises is open plot of land and description finds place in indenture of the lease in the schedule as well as in the plaint. BPCL has erected the retail outlet therein.

Provisions about renewal.

21. Section 5(2) deals with renewal of the lease if the Central Government so desires on the said terms and conditions as prescribed in the original lease deed. As per Section 7(3), the provisions of Section 5(2) are also applicable if there is vesting in the Government Company. Earlier landlord has renewed the lease in the year 1982 for a further period of 20 years. At that time, the present Plaintiff was not owner/landlord. Probably, it must be by exhausting the provisions of Section 5(2)/Section 7(2) of 1976 Act. The present plaintiff have purchased the property as per

the sale deed dated 21/03/2002. Admittedly, except original indenture of the lease, there is no written lease deed for a subsequent period brought to my notice.

Findings on the point of non renewal of lease.

22. It is true that the BPCL has requested the plaintiff to grant extension but it is admitted fact that it was not granted. There is correspondence between both the parties prior to filing of the suit and the trial Court has observed that the plaintiff has become the owner/landlord of the premises and there is observation that it is not disputed by the BPCL. There is only one letter tendered in the evidence sent by the BPCL to the earlier owner Shri Jog. Learned advocate Shri Purekar relied upon the observations in case of Dr. Ambika Prasad V/S Dr. Md. Alam and Anr.¹ wherein it is observed that if landlord transfers his rights and liabilities to a transferee, attornment at the instance of tenant is not required and it is not the requirement of Section 109 of the Transfer of Property Act. There is no grievance raised about findings about ownership of the plaintiff over the suit premises.

23. There is discussion by the trial Court in para nos. 23, 24 and 29 and by the Appellate Court in para nos. 13 and 15 on the issue of non renewal. There is no dispute that the BPCL cannot get extension as per the Burmah Shell Acquisition Act for more than once. The law on this point is very

1 AIR 2015 SC 2459

well settled. This was reiterated by this Court in case of *Bharat Petroleum Corporation Vs. Miriam J. Batliwala and Anr.*² (Para No. 31). So when there is no extension of the duration of the lease and when the lessor wants to terminate the lease, the procedure as laid down under the provisions of Section 106 of the Transfer of Property Act needs to be followed.

24. On this background, the question remains whether the Civil Court will be having jurisdiction to entertain the suit for eviction. Quit notice for 15 days was given as observed by the trial Court. The provisions of Section 106 of the Transfer of Property Act are relevant. If the lease is for the purpose other than agricultural or manufacturing, it is presumed that lease is on monthly basis and it can be terminated by 15 days notice. There are observations of the trial Court about the valid notice and its service. They are not challenged.

25. Learned Advocate Shri Purekar relied upon the following judgments :-

(i) *Indian Oil Corporation Ltd. Vs. Smt. Alka Agarwal*³

(ii) *Burmah Shell Oil Distribution now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor*⁴.

26. Whereas in case of Indian Oil Corporation, there is discussion

² 2009 (1) Bom. C.R. 481

³ AIR 2007 Bombay 113

⁴ AIR 1988 SC 1470

about the manner of execution of lease deed as contemplated under the provisions of Section 107 of the Transfer of Property Act. Lease deed for year to year or exceeding one year has to be made by registered instrument. In that case there was no registered instrument and duration of lease was not extended, hence it was held that it was monthly lease. It was observed that the lessee becomes the tenant holding over and order of eviction was held to be proper.

27. Whereas in case of Burmah Shell Oil Distribution Company as referred above there was also discussion about the effect on nature of lease if yearly lease is not made by registered instrument and in that eventuality the lease is to be presumed from month to month and can be terminated by 15 days quit notice. The provisions of Section 107 read with Section 116 of Transfer of Property Act were harmoniously construed. In present case 15 days quit notice is given.

28. In order to buttress his submission, learned Senior Advocate Shri Damale relied upon two judgments:

(i) *Subhash Chander and Ors. Vs. M/s Bharat Petroleum Corporation Ltd. (BPCL) and Anr. in Civil Appeal (ST) No. 7517 of 2012 decided on 28/01/2022.*

(ii) *V. Dhanapal Chettiar Vs. Yesodai Ammal reported in (1979) 4 Supreme Court Cases 214.*

29. According to him, the Hon'ble Supreme Court in Subhash Chander and Ors. (Supra) has observed that the Civil Court will not be having jurisdiction when the suit was filed as per the provisions of Transfer of Property Act particularly when the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 were applicable. In that case there was a lease of plot of land in municipal limits of Kaithal. Originally, it was let out to M/s Burmah Shell Oil Storage Distributing Company Ltd. for a period of 20 years. It was extended for further period of 20 years and it expired on 01/04/1978 (para no. 3). After that notice was sent under Section 106 of the Transfer of Property Act (not specifically mentioned) and tenancy was terminated and possession suit was filed before the Regular Civil Court. The Hon'ble Supreme Court has referred to the provisions of 1976 Act and particularly Sections 3, 5, 7 and 11 (para no. 18).

30. In para nos. 22, 23, and 24 the Hon'ble Supreme Court has also dealt with three of the judgments cited on the point of renewal of lease on the background of passing of the said Acquisition Act. It was held that those observations are not applicable to the facts of that case. Finally, it was held that the jurisdiction of the Civil court is barred and eviction suit ought to have been initiated as per the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. However, the Hon'ble Supreme

Court has not expressed any opinion about applicability of Burmah Acquisition Act 1973 vis-a-vis facts of that case.

31. Whereas according to the learned Advocate Shri Purekar, the observations therein are not applicable as the facts of that case and facts of present case are different. He invited my attention to the following provisions of 1973 Haryana Act:-

(i) Section 2(f) – Gives the meaning of the rented land.

(ii) Section 2(h) – Gives the meaning of the word tenant.

32. According to the learned Advocate Shri Purekar, open land is also covered and if it is let out the lessee becomes tenant as per the said Act. According to him, this is not the position as per the Maharashtra Rent Control Act, 1999. As per the provisions of Section 7(a) of the 1999 Act the meaning of the word premises is given. It includes a building and the gardens and fittings attached to that building. According to the learned Advocate Shri Purekar there is omission of the word land from the meaning of the word premises.

33. According to him as per the provisions of Section 5 (8) of the Maharashtra Rent, Hotel and Lodging House Rates Control Act, 1947, land used for purpose other than agriculture was included within the meaning of the premises. There cannot be any dispute about this proposition that as per 1999 Act land is excluded from the meaning of the

premises.

34. *The Hon'ble Supreme Court in case of Subhash Chander (supra)* had given those observations on the background that the Haryana Urban (Control of Rent and Eviction) Act, 1973 says about inclusion of rented land whereas this is not so as per 1999 Act. Hence the observations in that judgment will not be useful to the BPCL.

35. The Constitutional bench of the Hon'ble Supreme Court in case of *V. Dhanapal Chettiar (supra)* after taking overview of the provisions of various Rent Control Acts has observed that when quit notice is given as per the provisions of the said Rent Act, there was no need to give notice under the provisions of Section 106 of the Transfer of Property Act. According to the learned Advocate Shri Purekar observations therein will not be applicable because the parties were individuals and not a statutory corporation. This argument is not acceptable

36. This judgment was pronounced in the year 1979 and we are dealing with an appeal involving parties and one of the party is a public sector undertaking. It is for the reason that both the Courts below have observed that provisions of Maharashtra Rent Control Act will not be applicable to BPCL. It is for the reason that Section 3(1)(b) of 1999 Act excludes certain entities from the application of 1999 Act. There are two pre-requisites. One is it must be either of the entity as prescribed in **clause-'b'**

and it must have paid up share capital of Rs. 1 crore or more. Both the Courts below have observed that the provisions of 1999 Act are not applicable to the BPCL. No dispute is raised on that aspect that is to say BPCL does not fall in that category and it is not having paid much share capital of Rs. 1 crore and more. The Hon'ble Supreme Court in case of ***Smt. Leelabai Gajanan Pansare Vs. Oriental Insurance Co. Ltd.***⁵ dealt with the provisions relating to exemption under section 3(1)(b) of 1999 Act and held that Government Companies are part of public sector undertakings and hence exempted.

37. As such provisions of Maharashtra Rent Control Act will not be applicable and suit for eviction will certainly be governed as per the provisions of Transfer of Property Act. In fact, BPCL is fully conscious of the fact that the provisions of 1999 Act are not applicable to them, hence they have not laid any emphasis that eviction proceedings ought to have been initiated as per 1999 Act. So the observations in *V. Dhanpal Chettiar's* (supra) case that "separate notice under Section 106 of the Transfer of Property Act will not be required, if already there is quit notice under the Rent Control Act", will not be applicable to the facts of this case.

38. There is no necessity for the plaintiff to approach the Court prescribed as per the provisions of Maharashtra Rent Control Act. As said

5 AIR 2009 SC 523

above those provisions are not applicable to the BPCL. Hence Civil Court will be having jurisdiction. So this Court feels that proposed substantial question of law no. 1 in fact, does not arise. There is no perversity in those findings.

QUESTION NO. 2

39. There was also an issue raised that there is no mention of Section 106 in the pleadings. My attention is invited to the observations of the trial Court in para no. 30 on page no. 63. The Court has said that 15 days notice was issued as per the provisions of Section 106 of the Transfer of Property Act. There may be defect in the pleadings by not mentioning the provisions of the Section 106 of the Transfer of Property Act, but Court has to see what are the contents of the notice and what is the intention as depicted from the notice and the plaint. When it is clear that 15 days notice was given to the BPCL to vacate from the premises, the intention was clear. So this Court do not find merely not mentioning the Section 106 of the Transfer of Property Act, there is any lacuna.

40. In this case also even though BPCL has requested for extension it has not been granted by the plaintiff. So this Court does not find any fault in the observations of both the Courts below. This Court feels that neither of these two questions of law really do arise. Hence, the Appeal needs to be dismissed. Hence the Order.

ORDER

- (i) Appeal is dismissed.
- (ii) Interim Application No. 3119 of 2021 is disposed of.

41. At this stage learned Senior Advocate Shri Damle submitted that the Appellant is in possession of the premises since long and stay be granted to the this judgment for period of six weeks. It is submitted on behalf of the Respondents that now the execution is fixed in third week of September. Considering the fact that the Appellant is in possession of the suit premises since long, the effect and operation of this judgment is stayed for six weeks. It will be operative from the date of uploading of this Judgment.

[S. M. MODAK, J.]